

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29..10..2007

CORAM

THE HONOURABLE MR. JUSTICE K. CHANDRU

Writ Petition Nos.16811 to 16843, 16845 to 16851,
16854 to 16858, 22286 to 22289, 22296, 22431 to
22437, 22461 to 22465, 22506 to 22512, 22711 to
22720, 25822, 25823, 29523, 29533 of 2007

and

M.P.Nos.1 and 2 of 2007 in respective W.Ps.

C. Gopalan ... Petitioner in WP.16811/07
R. Navajeevan ... Petitioner in WP.16812/07
K. Mani ... Petitioner in WP.16813/07
R. Pitchaimani ... Petitioner in WP.16814/07
S. Elangovan ... Petitioner in WP.16815/07
V. Jayapal ... Petitioner in WP.16816/07
K. Kulandaivel ... Petitioner in WP.16817/07
R. Baskaran ... Petitioner in WP.16818/07
T. Rajamani .. Petitioner in WP.16819/07
B. Shajahan ... Petitioner in WP.16820/07
A. Santhakumar .. Petitioner in WP.16821/07
Subbarao Rangabashyam ... Petitioner in WP.16822/07
A. Vijayan ... Petitioner in WP.16823/07
K. Backkianathan .. Petitioner in WP.16824/07
T. Rajendran .. Petitioner in WP.16825/07
T. Viswanathan .. Petitioner in WP.16826/07

N. Vidyanandam .. Petitioner in WP.16827/07
L. Jayadoss Edward Raj .. Petitioner in WP.16828/07
M. Ravindran .. Petitioner in WP.16829/07
M.Dorairaj .. Petitioner in WP.16830/07
S. Guna Sekara Pandian .. Petitioner in WP.16831/07
S. Chinnannan .. Petitioner in WP.16832/07
C. Duraiswamy .. Petitioner in WP.16833/07
C. Ravichandran .. Petitioner in WP.16834/07
K. Irudayaraj .. Petitioner in WP.16835/07
N. Murugesan .. Petitioner in WP.16836/07
K. Murugesan .. Petitioner in WP.16837/07
R. Thangadurai .. Petitioner in WP.16838/07
C. Selvam .. Petitioner in WP.16839/07
V. Kalaimani .. Petitioner in WP.16840/07
A. Subramaniam .. Petitioner in WP.16841/07
G. Ganapathy .. Petitioner in WP.16842/07
M. Karthikeyan .. Petitioner in WP.16843/07
A. Kannan .. Petitioner in WP.16845/07
P.D. Manjula .. Petitioner in WP.16846/07
M. Ramesh .. Petitioner in WP.16847/07
P. Kanagaraju .. Petitioner in WP.16848/07
V. Raghavan .. Petitioner in WP.16849/07
R. Sinaaekithan .. Petitioner in WP.16850/07
A. Marimuthu .. Petitioner in WP.16851/07
S. Palani .. Petitioner in WP.16854/07

P. Govindaraj	..	Petitioner in WP.16855/07
R. Gopalakrishnan	..	Petitioner in WP.16856/07
R. Rathakrishnan	..	Petitioner in WP.16857/07
M. Suriliraj	..	Petitioner in WP.16858/07
K. Ramakrishnan	..	Petitioner in WP.22286/07
C. Ravikumar	..	Petitioner in WP.22287/07
R. Ravi	..	Petitioner in WP.22288/07
G. Meganathan	..	Petitioner in WP.22289/07
D. Ramalingam	..	Petitioner in WP.22296/07
G. Muniandi	..	Petitioner in WP.22431/07
G. Thiruvengadam	..	Petitioner in WP.22432/07
I. Britto Arokiasamy	..	Petitioner in WP.22433/07
R. Prem Kumar	..	Petitioner in WP.22434/07
K. Kolidoss	..	Petitioner in WP.22435/07
S. Manian	..	Petitioner in WP.22436/07
C. Gopalsamy	..	Petitioner in WP.22437/07
K. Brapakaran	..	Petitioner in WP.22461/07
S. Perumal	..	Petitioner in WP.22462/07
S. Venugopal	..	Petitioner in WP.22463/07
S. Shanmugasundaram	..	Petitioner in WP.22464/07
K. Ramanathan	..	Petitioner in WP.22465/07
B. Muniasekar	..	Petitioner in WP.22506/07
P. Muralidharan	..	Petitioner in WP.22507/07
L. Kannan	..	Petitioner in WP.22508/07

M. Rajakani .. Petitioner in WP.22509/07
M. Shanmugasundaram .. Petitioner in WP.22510/07
O. Ravi .. Petitioner in WP.22511/07
V. Gandhimathi .. Petitioner in WP.22512/07
T. Vedavyasan .. Petitioner in WP.22711/07
A. Annathurai .. Petitioner in WP.22712/07
K. Kariamalaialagu .. Petitioner in WP.22713/07
M. Sekar Wilson .. Petitioner in WP.22714/07
N. Sathasivam .. Petitioner in WP.22715/07
M. Manoharan .. Petitioner in WP.22716/07
P. Samuel .. Petitioner in WP.22717/07
J. Muthaiahpandian .. Petitioner in WP.22718/07
T. Issackumar .. Petitioner in WP.22719/07
S. Sundaramoorthy .. Petitioner in WP.22720/07
S. Rajendran .. Petitioner in WP.25822/07
G. Selvaraj .. Petitioner in WP.25823/07
D. Thirumuruganandham .. Petitioner in WP.29523/07
K. Subramanian .. Petitioner in WP.29533/07

Vs.

1. The State of Tamil Nadu, Rep. by
the Secretary to Govt.,
Agriculture (AE.II) Dept.,
Secretariat, Chennai 9.
2. The Commissioner of Agriculture /
Registrar of Agro-Engineering Service,
Chepauk, Chennai 5.

3. The Tamil Nadu Agro Engineering &
Service Co-operative Federation Ltd.,
rep. by the Managing Director /
Special Officer / Liquidator,
Chennai 97.

4. The Registrar of Co-operative Societies,
Kilpauk, Chennai 10. .. Respondents in all WPs

Prayer in W.P.No.16811 to 16843, 16845 to 16851, 16854 to 16858, 29523 of 2007: Petitions filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in connection with the orders passed by him in G.O.Ms.No.395 dated 27.11.2002 and G.O.Ms.No.303 dated 15.11.2005, Agriculture (AE.II) Department and also on the file of the 3rd respondent in connection with the order passed by him in Proc.No.Rc/4641/Admn-3/2002 dated 30.11.2004 and quash the same and direct the 1st respondent to re-deploy the petitioner in the light of the decision taken by it for TANCOF employees in G.O.(MS)No.142, Agriculture (OS) Dept., dated 4.6.2002 and also the order passed by the 1st respondent in letter No.16654/ADII/2004-8 dated 27.10.2004 in respect of the employees of the 3rd respondent itself with all monetary and service benefits.

Prayer in W.P.Nos.22286 to 22289, 22296, 22431 to 22437, 22461 to 22465, 22506 to 22512, 22711 to 22720 and 29533/07 : Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the order passed by him in his Proc.No.Rc/4641/Admn-3/2002 dated 30.11.2004 and also on the file of the 1st respondent in connection with the order passed by him in his Proc. in letter no.9523/AE2/2007-2 dated 16.05.2007 and quash the same and direct the respondents to re-employ the petitioner in service in any of the alternative and equal post in any department with service benefits.

Prayer in W.P.25822/07 and 25823 of 2007: Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records on the file of the 3rd respondent in connection with the order passed by him in his Proc.No.Rc/4641/Admn-3/2002 dt 30.11.2004 and quash the same and direct the respondents to re-employ the petitioner in service in any of the alternative and equal post in any department with service benefits.

For Petitioner : Mr.R. Singgaravelan

For Respondents : Mr.G. Sankaran,
in all WPs Special Govt. Pleader

C O M M O N O R D E R

Heard the arguments of Mr. R. Singgaravelan, learned counsel appearing for the petitioners in all these petitions and Mr.G.Sankaran, learned Special Government Pleader representing the respondents, and have perused the records.

2. The challenge in these batch of writ petitions is to the order of the first respondent State Government made in G.O. Ms. No. 395 Agriculture (AE II) Department dated 27.11.2002 and G.O. Ms. No. 303 Agriculture (AE II) Department dated 15.11.2005 as well as the order of the third respondent Tamil Nadu Agro Engineering and Service Co-operative Federation [for short, 'AGROFED'] dated 30.11.2004 and for a consequential direction to the State Government to redeploy the petitioners in some other Department in terms of the decision taken by it for the employees of the 'TANCOF' vide G.O. Ms. No. 142 Agriculture (OS) Department dated 04.6.2002 as well as the order of the State Government vide letter dated 27.10.2004 in respect of the workmen of the third respondent Federation.

3. By G.O. Ms. No. 395 Agriculture Department dated 27.11.2002, the State Government gave a direction to the second respondent Commissioner of Agriculture and Registrar of Agro-Engineering Services to initiate appropriate proceedings under Section 137 of the Tamil Nadu Co-operative Societies Act, 1983 [for short, 'TNCS Act'] and to wind up the Federation after following due procedure. The said order was issued in terms of the power vested under Section 182(1) of the TNCS Act. The third respondent also directed the second respondent Commissioner of Agriculture to give necessary direction to the third respondent to follow the procedure laid down in terms of the Industrial Disputes Act, 1947 [for short, 'I.D. Act'] for the issuance of notice and payment of compensation to all the eligible workmen.

4. By G.O. Ms. No. 303 Agriculture Department dated 15.11.2005, 385 employees were directed to be paid closure compensation, Ex-gratia amount, gratuity, unpaid salary, Provident Fund dues and Encashment of leave and the amount was to be paid by way of grant of loan from the Tamil Nadu State Renewal Fund, totalling to a sum of Rs.1560.25 lakhs. The second respondent was authorised to draw the said amount and pay the same to the AGROFED

workers. Accordingly, monies were drawn and paid to the workmen covered by the G.O. By an order dated 30.11.2004, which is specifically related to each of the petitioners, they were informed by the third respondent that their services were terminated from the Federation w.e.f. 30.11.2004 on account of the closure of AGROFED. As an annexure to the said order, a closure notice under Section 25FFF of the I.D. Act was issued to them. It is stated in that order that pursuant to the directions of the Government to wind up the AGROFED, the closure notices were given. They were also informed that they will be retrenched from the services of the AGROFED w.e.f. 30.11.2004 and one month notice was given to the petitioners w.e.f. 31.8.2004. They were also informed that they will be paid compensation as per the rate provided under Section 25 (F) (b) of the I.D. Act subject to availability of the funds. Therefore, the petitioner in each of the petitions wanted to set aside the two Government Orders as well as the order terminating his services pursuant to the closure notice.

5. The petitioners had earlier filed writ petitions before this Court being W.P. Nos. 9064 to 9069 of 2007, 9104 to 9110 of 2007, 9152 to 9158 of 2007 and 4116 to 4126 of 2007 challenging the very same orders. In those writ petitions, the petitioners did not press their case relating to the order in G.O. Ms. No. 395 Agriculture Department dated 27.11.2002 as well as the order of termination of their services dated 30.11.2004 by the AGROFED. They restricted the prayer only for the consideration of the proposals dated 27.10.2004 vide letter of the first respondent Government for their redeployment by relaxing the age restriction as well as ban on recruitment. Therefore, liberty was granted to make representation explaining their entitlement for redeployment and also applications of the proposals contained vide letter dated 27.10.2004.

6. It is not clear from the affidavits filed in support of these writ petitions as to whether the petitioners had sent any representation taking advantage of the earlier order of this Court. But there is nothing on record to show that such representations have been sent and the Government had passed any orders on them. On the contrary, once again, they have come up with the plea to challenge the very same orders, viz., G.O. Ms. No. 395 dated 27.11.2002 of the State Government and the termination orders dated 30.11.2004 passed by the third respondent. It is stated in paragraph 24 of the affidavit that the petitioners cannot invoke the jurisdiction under the I.D. Act as they were not workmen within the meaning of Section 2(s) of the I.D. Act and, therefore, they were filing the present writ petitions.

7. Before proceeding to hear the merits of the case, it must be stated that the challenge to the order dated 30.11.2004 is not maintainable in the light of the decision of the Larger Bench of this Court reported in 2006 (4) C.T.C. 689 [K.Marappan v. Deputy Registrar of Co-operative Societies, Namakkal and another] as the petitioners are admittedly employees of AGROFED, which is a Co-operative Society. Therefore, the writ petitions are liable to be rejected on this ground alone.

8. Further, though a challenge to G.O. Ms. No. 395 Agriculture Department dated 27.11.2002 was made in the earlier batch of writ petitions filed by the very same petitioners (admitted in paragraph 23 of the affidavits), they did not press the said writ petitions in respect of the orders dated 27.11.2002 of the Government made in G.O. Ms. No. 395 and the termination order dated 30.11.2004 and those writ petitions were dismissed. Hence, second writ petition on the very same issue is impermissible and the earlier order of this Court operates as a res judicata.

9. The Supreme court vide its decision reported in (1993) 2 SCC 495 [State of U.P. v. Labh Chand] has held that such a writ petition is not maintainable and in paragraph 7 of the judgment, it has been held as follows:

Para 7: "There are two reasons on which the first ground is founded. They are:

- (i) The learned Judge of the High Court, as a High Court even if assumed to have had discretionary power to entertain a second writ petition under Article 226 of the Constitution notwithstanding the fact that an earlier similar writ petition had not been entertained by the same Court because of the non-exhaustion of an alternate statutory remedy available to the petitioner in the matter, he could not have entertained the second writ petition unless it was found that the discretion already exercised by the High Court in refusing to entertain the earlier writ petition was either arbitrary or otherwise unwarranted.
- (ii) The learned Single Judge of the High Court, by entertaining a second writ petition under Article 226 of the Constitution on the subject-matter which was covered by an earlier writ petition dismissed by the Division Bench of the same court had given a go-by to the well-

established salutary rule of judicial practice and procedure that an order of a Single-Judge Bench much less of Judges of larger Bench of a High Court refusing to entertain the earlier writ petition in limine even on the ground of laches or on the ground of non-availing of alternate remedy ought not to be interfered with by another Single Judge or Judges of larger Benches, except in review or appeal, if permitted."

10. Even otherwise, the challenge to the direction issued by the State Government under Section 181 of the TNCS Act directing the second respondent Registrar of AGROFED to wind up the Society in terms of Section 137 of the TNCS Act cannot be permitted as it is only a statutory power which has been exercised by the State Government in terms of the TNCS Act.

11. A similar challenge made by the employees of the Tamil Nadu Co-operative Agro Oil Seeds Growers' Federation Employees' Union [TANCOF] was rejected by this Court vide its decision reported in 2004 (4) C.T.C. 177 [Tamil Nadu Co-operative Oil Seeds Grower's Federation Employees' Union v. The State of Tamil Nadu and others] and the relevant passages found in paragraphs 6 and 7 may be usefully extracted below:

Para 6: "... Where such a direction is given under Section 182(1), the Government may notwithstanding anything contained in the Act call for and examine and record the proceedings of the Registrar and pass such orders in the case as they may think fit. The power under Section 182(2) is thus exercisable by the Government notwithstanding anything contained in the Act including Section 82 and 137.

Para 7: In such view of the matter, the contention of the petitioner that the Government does not have jurisdiction to give direction under Section 182 cannot be accepted. However, in the present case, it cannot be said that the Government had taken a decision to wind up the Co-operative Societies. The impugned direction dated 29.11.2001 can be construed to be a direction as contained in Section 182(1) directing the Registrar to make an enquiry or to initiate appropriate proceedings for the purpose of examining as to whether there should be winding of the registered Society. As a matter of fact on receipt of such direction, it seems the Registrar of

Co-operative Societies has issued a further direction regarding making investigation obviously as contemplated under Section 82 of the Co-operative Societies Act. Keeping in view of the various provisions contained and the nature of direction, it must be construed that on the basis of direction given by the Government, the Registrar has taken up the matter and directed for investigation under Section 82. Thereafter it would be open to the Registrar to consider as to whether there should be winding up of the registered society. Obviously, the Registrar has to follow the procedure contemplated under Section 137. Thereafter, if a decision is taken for winding up of the Society, appeal can be filed before the State Government under Section 152 (2) (v). Even otherwise the State Government has also the power to call for the records under Section 182(2) and pass appropriate orders."

12. In that case, the learned Judge quashed the order passed by the State Government in granting permission under Section 25N of the I.D. Act to the retrenched workmen. When that portion of the order was taken on appeal by the TANCOF, the matter was dealt with by a Division Bench of this Court vide its decision reported in 2005 (1) M.L.J. 729 [Chairman and Managing Director, now represented by Liquidator, Tamil Nadu Co-operative Oilseeds Growers' Federation v. Tamil Nadu Co-operative Oilseeds Growers' Federation Employees' Union and others]. The said appeal was allowed holding that that the workmen will have to approach the industrial adjudicating forum for redressing their grievances regarding the violations of Labour Laws and the remedy by way of a writ petition is not available to the workmen.

13. In the present case, the petitioners have come forward to file the second round of litigation only on the basis of a subsequent order of the Government made in G.O. Ms. No. 303 Agriculture Department dated 15.11.2005 wherein monies were sanctioned for the purpose of disbursement to the workmen covered by the said order and also the terminal dues including the closure compensation. There cannot be a challenge to the said G.O., which is a consequential order upon the G.O. dated 27.11.2002. If that order is upheld, the challenge to the consequential orders is not permissible as nothing turns out of the consequential orders. The petitioners, admittedly, were not workmen and, therefore, even the question of grant of any closure compensation in respect of the petitioners do not arise. However, the Government has come forward to treat the workmen under the provisions of the I.D. Act as well as those who are not covered by the I.D. Act on par with each other for the purpose of rendering terminal benefits. The petitioners must

be thankful at least they are getting terminal benefits from out of the Renewal fund set by the Government and not by the third respondent. Apart from the fact that the petitioners have not pressed the earlier batch of cases with reference to the very same termination, the challenge to the orders of termination given to the petitioners are not maintainable and devoid of any legal merits.

14. The comparison of the petitioners with the employees of the TANCOF as sought out in G.O. Ms. No. 142 Agriculture Department dated 04.6.2002 as well as the letter dated 27.10.2004 is impermissible. In G.O. Ms. No. 142, all that has been done was to take the Agriculture Extension Wing of TANCOF along with the staff to the control of the second respondent Commissioner of Agriculture after the winding up of the TANCOF. It was not a case of closure of the Agricultural Extension Wing attached to the TANCOF and there was no case for taking over the workmen in the Oil Mills employed by them.

15. Even in the letter dated 27.10.2004, only the minutes of the meeting dated 14.10.2004 was circulated, which was only a proposal wherein and by which the redeployment of the AGROFED Ministerial staff was considered. But it had not reached any finality even as per the records produced. When a meeting of the concerned Heads of the Departments took place, in principle, it was agreed that wherever there is requirement for additional hands, it was agreed that the retrenched employees of the AGROFED will be absorbed.

16. Recently, the Supreme Court vide its decision reported in 2007 AIR SCW 7170 [State of Haryana and others v. Navneet Verma] dealt with the scope of the power of the Government to abolish posts and also the nature of judicial review involved therein. P. Sathasivam, J., speaking for the Bench, in paragraph 11 of the judgment, laid certain guidelines which are as follows:
Para 11: "We summarize the power of the government in abolishing a post and role of the court for interference:

- (a) the power to create or abolish a post rests with the government;
- (b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;
- (c) creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration;

- (d) creation, continuance and abolition of posts are all decided by the government in the interest of administration and general public;
- (e) the court would be the least competent in the face of scanty material to decide whether the government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fide, legal or factual;
- (f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by court is not warranted."

17. However, after the arguments were closed, Mr.R.Singgaravelan, learned counsel appearing for the petitioners circulated a proceedings of the State Government's Municipal Administration and Water Supply Department, vide its G.O. Ms. No. 211 dated 15.11.2007. It is seen in that order that one Block Manager, by name, M. Ravi, sought for an employment in the Thirunelveli Corporation as a Junior Engineer. He had the requisite qualification and the Corporation was willing to absorb the person by a Council Resolution No. 459 and also sought for Government's order relaxing the necessary rules for appointing the said person. The Government also under that order, relaxed Rule No. 3 and 4 of the Tamil Nadu Corporation Engineering and Water Supply Subordinate Service Rules, 1996 so as to accommodate the said person in a vacant post of Junior Engineer. That order does not help the case of the petitioner as it was done under an individual initiative of one person and it does not reflect the policy of the State Government to absorb the staff of the erstwhile AGROFED into the employment of the Government.

18. In the above circumstances, the writ petitions lack in merits and accordingly, will stand dismissed. However, there will be no order as to cost. Connected Miscellaneous Petitions are closed.

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Asst. Registrar.
/true copy/

Sub Asst. Registrar.

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To

1. The Secretary to Govt.,
Agriculture (AE.II) Dept.,
Secretariat, Chennai 9.
2. The Commissioner of Agriculture /
Registrar of Agro-Engineering Service,
Chepauk, Chennai 5.
3. The Managing Director /
Special Officer / Liquidator,
Tamil Nadu Agro Engineering &
Service Co-operative Federation Ltd.,
Chennai 97.
4. The Registrar of Co-operative Societies,
Kilpauk, Chennai 10.

W.P.Nos.16811 of 2007,
etc. batch

MDR (CO)
kk 8/1



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